Filed 2/9/16 Anaya v. J's Maintenance Service CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ARTURO ANAYA, Plaintiff and Respondent, v. J'S MAINTENANCE SERVICE, INC., Defendant and Appellant.	B261662 (Los Angeles County Super. Ct. No. BC552551)

APPEAL from an order of the Superior Court of Los Angeles County. Michelle R. Rosenblatt, Judge. Affirmed.

Neufeld Marks, Timothy L. Neufeld, Paul S. Marks, and Jennifer MikoLevine for Defendant and Appellant.

Kingsley & Kingsley, Eric B. Kingsley, Liane L. Katzenstein Ly, and David Winston for Plaintiff and Respondent.

J's Maintenance Service, Inc. (JMS) appeals from the denial of its petition to compel Arturo Anaya (Anaya) to arbitrate his claims under the Private Attorney Generals Act of 2004 (PAGA) for violations of Labor Code sections 203, 226, subdivision (a), 226.7, 510, 558, 1194 and 1199. We affirm. Based on *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380 (*Iskanian*), Anaya had an unwaivable right to pursue PAGA claims in superior court.

FACTS

Anaya applied for a job with JMS in 2003. He signed an application and an Employee Handbook Acknowledgment, Receipt and Consent Form (Handbook Receipt), both of which contained arbitration clauses.

JMS hired Anaya.

Several years later, in 2011, JMS updated its Employee Handbook. With respect to arbitration, the 2011 Employee Handbook stated, inter alia: "Alternative dispute resolution methods provide benefit to both [JMS] and employees by way of a generally speedy and economical process, in a relatively informal setting, by an impartial person with expertise in the field. Accordingly, it is the policy of [JMS] that any and all claims, disputes or controversies between employees and [JMS] shall be resolved by binding arbitration pursuant to the provisions of this policy, except as otherwise prohibited by law." In addition, the 2011 Employee Handbook provided: "The interpretation and enforcement of this [arbitration] policy shall be governed by the Federal Arbitration Act [(FAA)]."

On July 20, 2011, Anaya signed another Handbook Receipt, this one for the 2011 employee handbook, and thus stated, inter alia: "I hereby agree that all claims, disputes and controversies of any kind whatsoever, between me and [JMS], including but by no means limited to, those arising out of or related to my employment with [JMS], whether during or after that employment, will be submitted to binding arbitration to the fullest extent permitted by law, in accordance with the 'Arbitration of Disputes' policy set forth in the Employee Handbook."

Anaya filed a PAGA action against JMS. After Anaya filed his first amended complaint, JMS filed a petition to compel arbitration. The petition was denied.

This timely appeal followed.

DISCUSSION

On appeal from the denial of a petition to compel arbitration, we review the trial court's ruling de novo. (*Flores v. Axxis Network & Telecommunications, Inc.* (2009) 173 Cal.App.4th 802, 805.) The deciding issue here is whether PAGA claims are subject to predispute arbitration clauses.

The PAGA deputizes citizens as private attorneys general to enforce the Labor Code by bringing a civil action "personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations." (*Iskanian*, *supra*, 59 Cal.4th at p. 380.) An employee suing under the PAGA does so as a proxy or agent of the state's labor enforcement agencies. (*Ibid*.) Thus, "an aggrieved employee's PAGA action for civil penalties is a type of qui tam action; it functions as a substitute for an action brought by the government itself, the government is always the real party in interest, and a judgment thus binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. [Citation.]" (*Securitas Security Services USA, Inc. v. Superior Court* (2015) 234 Cal.App.4th 1109, 1119.) "Employers are liable for a penalty of $100 for each aggrieved employee per pay period for the first violation and $200 for each aggrieved employee per pay period for each subsequent violation. [Citation.] . . . Seventy-five percent of the penalty goes to the Labor and Workforce Development Agency ([Agency]) for enforcement of labor laws and education, and . . . 25 percent is recovered by the aggrieved employees. [Citation.]" (*Brown v. Ralphs Grocery Store* (2011) 197 Cal.App.4th 489, 501.)

Iskanian held that "an arbitration agreement requiring an employee as a condition of employment to give up the right to bring representative PAGA actions in any forum is contrary to public policy[,]" and that "an employee's right to bring a PAGA action is unwaivable." (*Iskanian, supra,* 59 Cal.4th at pp. 360, 383.) Thus, *Iskanian* establishes that a predispute arbitration clause in an employment contract cannot be used to compel

arbitration of PAGA claims. This is because PAGA was "established for a public reason[,]" and "a law established for a public reason cannot be contravened by a private agreement[.]" (*Id*. at p. 383.) Notably, the arbitration agreement indicates that it shall be interpreted and enforced pursuant to the FAA. The FAA, however, does not preempt the rule of *Iskanian*. The *Iskanian* court explained that the FAA only applies to private disputes, and PAGA claims involve disputes that are not private in nature, i.e., they involve disputes between an employer and the state. (*Iskanian*, *supra*, 59 Cal.4th at pp. 360, 385.)[1]

JMS tries to jockey us away from the foregoing interpretation by suggesting that only one type of employment agreement would run afoul of *Iskanian*, i.e., an agreement that would constitute a blanket forfeiture of PAGA claims in all forums. According to JMS, as long as an employment agreement affords an employee at least one forum for PAGA claims, the agreement does not violate public policy. The problem with this argument is that the PAGA was established for a public reason, and that law cannot be contravened by a private agreement. A private agreement limiting PAGA forums would contravene the PAGA by constricting an employee's ability to choose the best forum for pursuit of those PAGA claims.

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[1] We observe that, in dicta, *Khalatian v. Prime Time Shuttle, Inc.* (2015) 237 Cal.App.4th 651, 657 cited *Iskanian* as holding that "PAGA claims are not subject to private arbitration agreements." The court in *Williams v. Superior Court* (2015) 237 Cal.App.4th 642, 649, held that an employee cannot be compelled to submit any portion of his representative PAGA claims to arbitration, including whether a plaintiff is an aggrieved employee under the PAGA. After reviewing language in *Iskanian* regarding the FAA's application to private disputes but not claims belonging to a government agency, *Garden Fresh Restaurant Corp. v. Superior Court* (2014) 231 Cal.App.4th 678, 687–688, fn. 3, observed, "Based on this language, one might reasonably conclude that a court could never *compel* arbitration of a PAGA claim unless *the state* . . . had entered into an arbitration agreement with the defendant."

Based on *Iskanian*, Anaya cannot be compelled to arbitrate the PAGA claims he asserts against JMS on behalf of the state.[2]

All other issues are moot.

DISPOSITION

The order is affirmed.

Anaya shall recover his costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
HOFFSTADT

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[2] We express no opinion as to whether an employee can agree to arbitrate a PAGA claim after a dispute arises. Conceivably, our Supreme Court would allow postdispute arbitration agreements to cover PAGA claims because, at that point, an employee would be represented by counsel who could weigh the benefits and risks of proceeding in arbitration rather than superior court.